IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 6598 of 2013
Date of decision : 16.03.2015

Bharma Ranole @ Bharbati Rani

..... Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR.JUSTICE AMOL RATTAN SINGH

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Present:- Mr. Jagbir Malik, Advocate
for the petitioner.

Mr. G. S. Bajwa, Addl. AG, Haryana.

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AMOL RATTAN SINGH, J.

The petitioner challenges the order of the 3rd respondent (General Manager, Haryana Roadways, Karnal), dated 07.02.2011 (Annexure P-3), by which her late husband, Jai Singh, who worked as a driver with the said respondent, has been compulsorily retired w.e.f. 19.12.1986, the date with effect from which he was earlier terminated from service.

2. As already noticed in the order issuing notice, on 26.03.2013, the petitioners' late husband was earlier imposed a punishment of termination from service, which was challenged by him by filing CWP No.8449 of 1990 before this Court. He, however, unfortunately expired during pendency of that writ petition, on 22.08.2003.

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3. The reason for termination was that, while driving bus No.3659, on 02.08.1996, on the route allotted to him, the petitioners' late husband took the bus inside the city instead of taking it via the bypass as he was supposed to. Unfortunately, an accident took place in the city, in which a cyclist was killed. The petitioners' late husband is stated to have left the bus on the site of the accident and to have run away, and thereafter, he allegedly remained absent from duty from 03.08.1986 to 06.08.1986.

An enquiry having been ordered in the disciplinary proceedings initiated, he was stated to have been found guilty of the charge of unauthorisedly taking the bus through the city instead of via the bypass route, but the second charge, with regard to absence from duty, was not established.

4. The General Manager, Haryana Roadways, Karnal (respondent no.3 herein), after giving the petitioners' husband notice and offering a personal hearing to him, is stated to have passed the order terminating his services, on account of the charge that was proved against him.

5. As already noticed that order came to be challenged by Jai Singh, late husband of the petitioner, by filing CWP No.8449 of 1990, during the pendency of which he is stated to have expired.

That writ petition was decided on 10.11.2010, by a co-ordinate Bench, vide its judgment, Annexure P-2 herewith, from which the above stated facts are taken and have been reproduced.

6. In that judgment, it was noticed by the Court that the petitioners' late husband had been acquitted of the criminal charge against him, on the finding that it was the cyclist who rode his cycle in a negligent

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manner, thereby causing the accident.

Hence, even while observing that the parameters of deciding a criminal case are obviously different from that of a civil case, as regards the establishment of guilt or innocence of an accused, however, the factum of the accident having been found to have been caused due to the negligence of the cyclist, was specifically noted by the Court, in the aforesaid judgment passed in CWP 8449 of 1990.

Having noticed the above, the petitioners' husband was still found to have violated the instructions of the respondents, directing him to go via the bypass and instead, of having taken the bus inside the city. As such, the finding of the enquiry officer in that regard, was not disturbed by this Court.

The petitioners' defence, in the disciplinary proceedings, that he had taken the bus through the city on the insistence of passengers was taken note of in the judgment, but it was held that the late Jai Singh had, factually, violated instructions/orders.

7. Having come to the above conclusion, however, it was further held that the punishment awarded, of termination from service, was disproportionate to the charge of violation of an office order, as there was no charge at all in the disciplinary proceedings with regard to any rash and negligent driving by the petitioners' husband.

8. Consequently, CWP No.8449 of 1990 was disposed of, by setting aside the order of termination and by further directing the 3rd respondent to award a punishment proportionate to the nature of the charge proved against the late Jai Singh.

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Thus, consequent upon the directions of this Court to award a punishment as aforesaid, the order presently impugned in this petition was passed by respondent no.3 and has come to be challenged on various grounds, including (i) that the order has been passed without adhering to the principles of natural justice; (ii) that Rule 3.26 of the Punjab Civil Services Rules, Volume 1 Part 1 (as applicable to Haryana), has been violated, inasmuch as, no government servant can be retired compulsorily without serving upon him a notice of three months or by paying him three months salary in lieu thereof; and (iii) that the order has been passed with retrospective effect, which is impermissible even as per the law laid down by a Division Bench of this Court, in **Harbhagwan vs. State of Haryana 1997 (1) SCT 423.**

9. It was further argued by Mr. Jagbir Malik, learned counsel for the petitioner that, as a matter of fact, the impugned order is in derogation of the judgment of this Court passed in CWP No.8449 of 1990, inasmuch as, the net effect of compulsorily retiring the petitioners' husband, with effect from the date of his termination from service, in fact, is the same as termination from service, but for some very negligible monetary benefits which are only an eye-wash, as the benefit is less than Rs.11,000/-, as admitted by the respondents in the reply filed.

In fact, Mr. Malik submitted, that the impugned order is in contempt of the judgment passed by this Court, wherein it was specifically held that the punishment of termination was too severe and disproportionate to the charge of violation of orders of taking the bus on a slightly different route.

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He, thus, prayed that the petition be allowed and that the respondents be burdened with heavy costs for deliberately violating the judgment of this Court, or at least of circumventing it to an extent that the judgment itself was negated.

10. Mr. G. S. Bajwa, learned Additional Advocate General, Haryana, on the other hand, drew attention of this Court to the amended written statement filed on behalf of respondents no.2 to 4, in which reasoning has been given, that the order of compulsorily retiring the petitioners' husband, pursuant to directions issued by this Court for reducing the punishment of termination, was justified in view of the fact that the petitioners' late husband had taken the bus on a route, in violation of specific orders and the said action had resulted in an accident in which one person died.

Mr. Bajwa further submitted that though, no doubt, the monetary benefits admissible to the petitioner were not very significant, however, the fact remained that a person had died on account of the action of the late Jai Singh and as such, the impugned order deserves to be sustained.

11. Learned State counsel further submitted that the contention of counsel for the petitioner, with regard to an order being passed with retrospective effect being unsustainable, was not a sound argument, in view of the fact that the impugned order was passed pursuant to directions of this Court in CWP No.8449 of 1990, which in any case was after the death of the petitioners' husband and as such, any order imposing a lesser punishment than termination of service, whatever such order might be,

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would necessarily have been passed only on the basis of the record, with no further hearing possible, in the case of a person who was no longer alive.

He, therefore, prayed for dismissal of the writ petition.

12. Having considered the arguments addressed by the learned counsel for the parties and having gone through the record before this Court, I am not inclined to agree with the argument of Mr. Malik with regard to the order violating the principles of natural justice, because, as submitted by Mr. Bajwa, obviously no order could have been passed pursuant to the directions given by this Court, other than on the basis of the record of the disciplinary proceedings conducted in the year 1986, with the petitioners' husband already having died in the year 2003. Thus, had the punishment been reduced to stoppage of increments or forfeiture of service etc., even such an order would have, obviously, been passed only on the basis of record, with no possibility of any hearing to a dead man, to state the obviously ridiculous.

13. Having said that, I am in agreement with learned counsel for the petitioner as regards the fact that the impugned order is virtually of the same effect as was the order of termination, because no pensionary benefits etc. have been held to be admissible to the petitioners' late husband, or to her after his death, in view of what has been stated in the written statement filed by the respondents.

The stand of the respondents, is that since the late Jai Singh remained in service only from 26.09.1980 till 16.12.1986, he did not qualify for pension even after compulsorily retirement, such period of service being only for of five years and 28 days (some period 'allegedly'

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being not countable), whereas the qualifying service in terms of Rule 6.16 (1) of the Punjab Civil Services Volume II (as applicable to Haryana), is a minimum of ten years at the time of retirement.

However, since the late Jai Singh had completed more than five years service, he was entitled to gratuity in terms of Rules 6.16-A and 6.16-B of the aforesaid Rules and as such, the petitioner had been paid gratuity of an amount of Rs.9135/-, leave encashment of an amount of Rs.655/- and Rs.1119/- by way of the amount from his General Provident Fund.

The stand of the respondents is, thus, that other than the above, no benefit can be given to the petitioner.

14. Though there is no doubt, that normally a Court would not substitute its opinion as regards the quantum of punishment imposed by a disciplinary authority, unless such punishment is wholly disproportionate to the charge levelled against an employee, however, factually the matter remains that this Court (co-ordinate Bench) had vide its judgment in CWP No.8449 of 1990, specifically held that the punishment of termination from service was completely disproportionate to the charge of violating an order of not following a particular bus route (with a diversion having been made by the petitioner, as already discussed in detail). That judgment has become final, without any challenge to it by the respondents.

No doubt, the respondents have, technically, reduced the punishment from one of termination to that of compulsorily retirement; however, there has been almost no benefit to the employee or his widow and her family. Thus, to that extent, the order imposed is definitely not in the spirit of the directions given by this court, in the aforesaid judgment.

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Without doubt, if the respondents were aggrieved of the said directions, they would have had their remedy in law, which they chose to not avail. Having thus accepted the judgment, it was definitely unbecoming of the 3rd respondent to have passed an order in circumvention of the directions given by this court, though technically not in contravention thereof.

15. This Court obviously realises that what weighed with the punishing authority, is that, as a consequence of the violation of a specific order, with regard to following a specific route, a motor accident was caused, in which a human being very unfortunately lost his life. Possibly, if the late Jai Singh had not followed that route, the said person may not have met his end and obviously not with the bus in question.

However, even while seeing what was probably in the mind of 3rd respondent, this Court is also conscious that with a specific finding that the negligence was that of the cyclist himself, as held by the Court trying the criminal case and as recorded to that effect in the judgment in CWP No.8449 of 1990, the question would be whether the petitioners' husband would still be liable for termination of his service or compulsorily retirement, when, as already held in the aforesaid judgment, the charge eventually against him was not one of rash and negligent driving, but of violation of a specific route.

16. In my opinion, in the above circumstances, with the termination having been already held by this Court to be excessive punishment, even compulsorily retirement, thereby permanently curtailing all benefits to the employee and his family in perpetuity, is also disproportionate to the charge

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proved against the late Jai Singh and as such, the impugned order deserves to be quashed.

17. It also needs to be noticed that nothing has come on record with regard to any compensation having been paid to the family of the cyclist who died in the accident, either by the petitioners' late husband, or by the respondents on account of any vicarious liability, in any proceedings before a Motor Accident Claims Tribunal, or otherwise.

Hence, though this Court would otherwise have been inclined, even while quashing the impugned order, to award some compensation even at this very belated stage, to the family of the cyclist, from the pensionary and other benefits which would flow to petitioner, on account of the setting aside of the impugned order; however, since more than 28 and half years have gone by since the accident, this Court desists from immediately ordering such compensation, without trying to ascertain facts with regard to any compensation having been earlier paid and further, with regard to traceability of the family of the person who died in the accident.

18. Consequently, this petition is allowed and the impugned order dated 07.02.2011 (Annexure P-3), is quashed.

Since the matter had already been remitted to the respondents once before, vide directions given in CWP No.8449 of 1990, to impose a lesser punishment than the one earlier imposed upon the petitioners' husband, I find it would be a futile exercise to start another round of litigation by remitting the matter. Hence, even though a Court, either in writ jurisdiction or otherwise, should not generally substitute the quantum of punishment imposed upon an employee and should leave it to the competent

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administrative authority to do the needful, however, in the circumstance aforesaid, in my opinion, it would be more appropriate to substitute the punishment at this stage itself instead of causing another round of litigation, which started in 1986/1990.

19. Hence, the punishment imposed upon Jai Singh, the deceased husband of the petitioner, is reduced to one of stoppage of five increments with permanent effect, with effect from the date of the original punishment order, i.e. 19.12.1986.

The petitioners' late husband would thus, after imposing the abovesaid punishment order, be deemed to have been in service till the natural date of his superannuation, i.e. sometime in the year 1998 (as given in the written statement filed by the respondents). However, since he did not actually work during the said period, no actual benefit of arrears of salary for such period would be paid to the petitioner, though such arrears would be calculated for the purpose of fixation of her husbands' pension, uptill the date of his deemed superannuation from service in 1998. Thereafter, subject to what is hereinafter said, the arrears of family pension, as would be calculated and found due to her, shall be payable to the petitioner, from the date of the death of her husband. Family pension would thereafter be continued to be paid to her, as per Rules.

20. It is made clear that though, as per the relevant Civil Services rules, the benefit of pension is to be calculated only on the basis of actual emoluments drawn by an employee at the time of superannuation, however, in the peculiar circumstances noted hereinabove, such pensionary benefits shall be calculated presuming that the petitioners' late husband, Jai Singh,

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Driver, was in service on the date that he would have superannuated from service, and calculation of pension payable to him would be made accordingly, as would be consequent family pension payable to the petitioner after his death.

This petition is partly allowed, to the above extent.

21. Despite having held as above, and even though that is not a matter directly in issue before this Court, it would be necessary in the circumstances, to determine whether any compensation was paid to the cyclist who died as a result of the accident with bus driven by the petitioners' husband, even though more than 28 years have gone by since then.

22. Consequently, as regards any compensation payable to the family of the person who unfortunately died in the accident caused by that the petitioners' husband, in the year 1986, the 3rd respondent is directed to file an affidavit, after examining the record, as to whether any compensation was already paid or not to that family, either in MACT proceedings, or otherwise.

23. The petitioner would also file an affidavit as to whether she has any knowledge of any such compensation paid, either as a result of Court proceedings or any out of Court settlement.

24. The matter be now put up for hearing, for that limited purpose, on 22.04.2015.

Till then, though the calculation of payments to be made to the petitioner shall be calculated by the 3rd respondent, the payments shall not be released to her.

(AMOL RATTAN SINGH)
JUDGE

16.03.2015
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